

Mr Combe
By email only to:
[Request-249787-
4515232b@whatdotheyknow.com](mailto:Request-249787-4515232b@whatdotheyknow.com)

Web Site: www.dft.gov.uk

30 March 2015

Dear Mr Combe,

Freedom of Information Request F0012025

As an independent Senior Civil Servant who was not involved in the original decision, I have been asked to carry out an independent review of the Department's response to your request of 22 January 2015 under the Freedom of Information Act 2000 ("the Act"). In your request, you asked for:

all documentation and correspondence regarding the Temporary Closure Orders which have been applied to this path and approved by the Department for Transport since 17th October 2014. In particular the reasons for granting the extensions and the reasons that have been provided by Dorset County Council for the extended closure and the actions they have taken and propose to take to resolve the problems with this path.

I have now completed my internal review of the Department's decision to withhold information in its response to your information request. For the purpose of the review I have considered the following information:

- the original request dated 22 January 2015;
- the Department's response letter dated 18 February 2015 including its attachments;
- your email seeking this review of 24 February;
- a range of associated material that documents your exchanges with the Department in relation to this footpath closure in order to understand the wider context and some of the references made in your complaint.

Whilst the latter material sheds light on a number of concerns that you have expressed about the footpath closure and the handling of your requests for information, my review of your information request has been limited to the specific request in your letter of 22 January.

First, I am content that the relevant information held by the National Transport Casework Team team in DfT was identified and considered.

I note that the Department confirmed that it holds the information you requested but that one email was withheld as it was deemed to fall under the exemption in Section 43(2) of the Act (“...[likely to, prejudice] the commercial interests of any person (including the public authority holding it.)”).

On further reflection I believe that the information in question falls within the definition of ‘environmental information’ set out in Regulation 2 of the Environmental Information Regulations 2004 (“the EIRs”). In particular, I have considered the definition of environmental information in Regulation 2 which includes:

(c) measures (including administrative measures), such as policies, legislation, plans, programmes, environmental agreements, and activities affecting or likely to affect the elements and factors referred to in (a) and (b) as well as measures or activities designed to protect those elements...

I consider it likely that plans in relation to a footpath would be likely to affect the land and landscape (elements mentioned in part (a) of the definition).

Given my conclusion that the information is ‘environmental information’, your request should have been considered under the EIRs. (Environmental information is exempt from disclosure under Section 39 of the FOI Act, because the FOI Act defers to the EIRs.)

Under the EIRs, there is a presumption in favour of disclosure. However, I have considered whether any of the exceptions provided in Regulation 12 of the EIRs might be appropriate. The exception that I believe is relevant is Regulation 12 (5)(f), which provides that a public authority may refuse to disclose information where disclosure would adversely affect:

- (f) the interests of the person who provided the information where that person —
 - (i) was not under, and could not have been put under, any legal obligation to supply it to that or any other public authority;
 - (ii) did not supply it in circumstances such that that or any other public authority is entitled apart from these Regulations to disclose it; and
 - (iii) has not consented to its disclosure.

In my view and based on evidence supplied by Dorset County Council, all three legs of the exception are met in this case.

This exception is subject to a public interest test. In response to your original request, handled under the Freedom of Information Act, a public interest test was applied. The principal reason against disclosure was cited as the prejudicing of the commercial position of Dorset County Council during ongoing sensitive negotiations with a third party.

The email in question appears to fall within the ambit of the 12(5)(f) exception and the arguments in respect of the public interest test are materially the same.

I have carefully weighed the arguments for non-disclosure against the public interest in disclosure. In doing this and in considering the information that was withheld by virtue of the public interest test applied and set out in the response to you of 18 February, I have sought to establish from the National Transport Casework Team and, through them, from Dorset County Council the nature and purpose of the negotiations, their status and the specific risks that disclosure would pose.

I have sought to weigh these points against the arguments supporting the general presumption in favour of disclosure, including the ones cited in the public interest test that was appended to the Department's reply of 18 February 2015 and the points you make in your email seeking a review. In my view, the public interest arguments for withholding the information outweigh the public interest arguments for its release.

Therefore, while I conclude that your request should be considered under the EIRs as described above, I also conclude that the information in question should not be disclosed for the reasons given, i.e. that one of the exceptions provided under the EIRs can be applied appropriately and that the public interest is in favour of not disclosing the information.

To the extent that any of the information covered by your request may be considered to fall outside of the definition of 'environmental information', it is my view that the information is exempt under Section 43(2) of the FOI Act. This is because disclosure of the information in question would prejudice the commercial interests of a third party, Dorset County Council. The public interest arguments for and against disclosure therefore mirror those discussed above in relation to EIR exception 12(5)(f).

On a minor point in relation to the public interest test provided to you in the response of 18 February, I note that the text in the box marked "Decision" makes reference to people other than Dorset County Council who might be prejudiced by disclosure even though they are not mentioned in the text setting out "Factors against disclosure". I believe that it is a relevant consideration but one which should ideally have been cited as one of the factors against disclosure. I took this point into account in my consideration above.

I have further considered whether any parts of the information held by the Department might be disclosed without causing the impacts that are central to the arguments relied on in the public interest tests applied above. My view is that disclosing what would be very limited and meaningless information is of little use and not in the spirit of what you were seeking in your original request.

Therefore, after review, I do not accept the substance of your complaint and uphold the original decision to withhold the information, but for the reasons set out above.

If you are not content with the outcome of this internal review, you have the right to apply directly to the Information Commissioner for a decision. The Information Commissioner can be contacted at:

Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Anthony Ferguson'. The signature is fluid and cursive, with the first name 'Anthony' and the last name 'Ferguson' clearly distinguishable.

A FERGUSON